

DECISION



18829 Agazarian PL
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-197802

DATE: July 15, 1981

MATTER OF: Jonathan F. Anderson - [Claim for
Reimbursement for Dependent Day Care]

DIGEST: Foreign Service Reserve Officer claims reimbursement for dependent child care expenses incurred from January 15 through March 19, 1979, incident to wife attending orientation and language training courses. Although Section 405 of the Foreign Relations Authorization Act, Fiscal Year 1979, effective October 1, 1978, provided the Secretary of State with the discretionary authority to make grants to family members of officers and employees attending language and orientation programs of Foreign Service Institute, the regulations implementing the grants were not issued until March 20, 1979. The effective date of grant entitlements is the effective date of the regulations and not the earlier effective date of the Authorization Act.

This decision concerns the appeal by Mr. Jonathan F. Anderson, a Foreign Service Reserve officer, of the disallowance by the Claims Division of his claim for reimbursement of child care costs during the period prior to the issuance of Foreign Affairs Manual Circular No. 784 which governs the reimbursement of such expenses. Upon review, we sustain the action by our Claims Division.

Mr. Anderson's wife attended a family workshop and training in the Bengali language sponsored by the Department of State. While his wife attended these programs he incurred costs for the care of their two young children. For the part of her orientation and training covering the period January 15 through March 19, 1979, he incurred child care costs in the amount of \$576.

He states that upon his entry into the Foreign Service in January 1979, he was advised during the employee orientation program that Congress had authorized a new program to pay for child care expenses in order to enable employees' spouses to attend language classes and other training.

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He states that upon making further inquiry he was advised by an agency official that there was such a program, and although the application forms had not been issued, he would have a legal entitlement to reimbursement and that he should save his receipts for child care expenses for reimbursement when the forms became available. The file contains statements by agency officials which confirm that he was given such information. He states that based on the information concerning his entitlement to reimbursement for dependent child care his wife enrolled in the family workshop and language training programs offered by the Department of State.

In April 1979 the agency denied that part of the claim for child care expenses incurred during the period January 15 through March 19, 1979. This denial was made on the basis that the regulations governing reimbursement for dependent child care, FAM Circular No. 784, did not go into effect until March 20, 1979, the date of issuance, and that authorization could not be approved for services incurred prior to such date.

By Certificate of Settlement dated November 5, 1979, the Claims Division upheld the agency denial of the claim on the basis that the program for grants for dependent day care incident to orientation and language training was not established until March 20, 1979.

Section 1041 of title 22, United States Code, provides, in pertinent part, that the Secretary of State may provide appropriate orientation and language training to family members of officers and employees in anticipation of the assignment abroad of such officers and employees or while abroad.

Section 405 of Foreign Relations Authorization Act, Fiscal Year 1979, Public Law 95-426, October 7, 1978, 92 Stat. 963, 979, amended Title VII of the Foreign Service Act of 1946 by adding a new Section 708 effective October 1, 1978. That section provides, in pertinent part, that to facilitate orientation and language training provided to members of families of officers and employees under 22 U.S.C. § 1041, the Secretary of State "may make grants" to family members up to \$300 per month for necessary costs incurred

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incident to attending language and orientation programs of the Foreign Service Institute.

On March 20, 1979, the Department of State issued FAM Circular No. 784. That Circular, entitled "Orientation and Language Training for Family Members," establishes the procedures for and authorizes the awarding of grants pursuant to the authority given the Secretary of State by Section 708 of the Foreign Service Act of 1946, as added by Section 405 of Public Law 95-426, supra. Under the Foreign Affairs Manual System the Circular, which does not specify an otherwise effective date, is effective from the date of its issuance.

Subsection 11b of the Circular provides, in pertinent part, that to apply for a dependent child care grant resulting from orientation and/or language training, a family member must submit a Request for Training Form, together with information required by the Circular. Furthermore, that subsection provides that the Director of the Foreign Service Institute or designee must approve the request for training before the training begins and must also approve the information concerning the dependent care grant.

In his appeal Mr. Anderson asserts that the effective date of Section 405 of Public Law 95-426, October 1, 1978, and not the effective date of the regulations, March 20, 1979, should determine his entitlement to reimbursement for child care expenses. In support of this position, he has cited case No. 337, which is reported summarily in the October 1979 issue of the Department of State Newsletter. In that case the Foreign Service Grievance Board apparently held that the limitations on the scope of agency discretion to reject grievance board recommendations contained in subsection 692(14) of the Foreign Service Act of 1946, as added by Section 404(a) of Public Law 94-141, November 29, 1975, 89 Stat. 765, were effective as of the effective date of the Act rather than on the date regulations were promulgated some 14 days after the agency administrator made a final determination with respect to the particular grievance board recommendation there involved. While the summary provided by Mr. Anderson does not show the basis of the board's decision, we presume that its determination was

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based on the fact that the Act itself established the Foreign Service Grievance System and directed the Secretary of State to implement the system by promulgating regulations which shall not "in any manner alter or abridge the provisions of due process established by this section for grievants."

Section 708(a) of the Foreign Service Act of 1946, as added by Section 405 of Public Law 95-426, effective October 1, 1978, provided that the Secretary of State "may make grants" for necessary expenses incurred incident to family members of employees attending language and orientation programs. We note that the statutory language "may" is ordinarily permissive in nature rather than mandatory. The Act did not itself establish a right or entitlement to such grants or create a program for reimbursement. Accordingly, it was not until the Secretary of State exercised his legal authority under Section 708(a) by issuing FAM Circular No. 784, prescribing the manner in which grants would be made, that such entitlements became effective. The Department of State has confirmed to us that the intended effective date of FAM Circular No. 784 is March 20, 1979, the date of issuance.

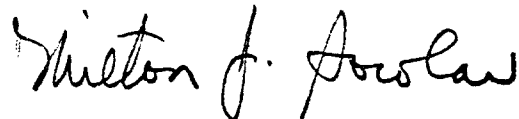
Although statutory regulations when first issued may be made retroactive in proper cases to the date contemplated by the statute, any modification or amendment thereof can operate prospectively only. 45 Comp. Gen. 451 at 453 (1966). We have consistently held that when regulations are properly issued, rights thereunder become fixed and, although such regulations may be amended prospectively to increase or decrease rights given thereby, they may not be amended retroactively. See 32 Comp. Gen. 315 (1953); 47 *id.* 127 (1967); and 56 *id.* 1015 (1977). There is no provision in FAM Circular No. 784 that the entitlements thereunder shall apply retroactively to the effective date of the authorizing statute. Therefore, there is no entitlement to reimbursement for child care expenses prior to March 20, 1979, the effective date of FAM Circular No. 784.

Mr. Anderson also contends that he should be reimbursed for child care expenses prior to March 20, 1979, as agency officials advised him that he would be eligible for reimbursement thereof and he states that his wife enrolled in the family workshop and language programs as a result of such assurances.

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We recognize that Mr. Anderson was furnished erroneous information and we do not dispute that he may have relied on such information. However, these circumstances do not provide a basis for the reimbursement of the child care expenses claimed. It is well settled that in the absence of specific statutory authority the United States is not responsible for erroneous advice or acts of its officers, agents, or employees, even though committed in the performance of their official duties. See John S. Treadwell, B-192659, February 14, 1979, and Clayton Jennings, B-194270, May 9, 1979.

In accordance with the above, there is no entitlement to reimbursement of child care expenses incurred prior to March 20, 1979, and the Claims Division's disallowance of Mr. Anderson's claim is sustained.

A handwritten signature in dark ink, reading "Milton J. Aroslaw". The signature is written in a cursive style with a large, stylized initial "M".

Acting Comptroller General
of the United States